

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

RAYMOND L. VINCENT,	:	C.A. No. 06A-04-004 THG
Appellant,	:	
v.	:	
STATE OF DELAWARE,	:	
Appellee.	:	

O R D E R

1) Raymond L. Vincent (“Vincent”) has filed a petition seeking a writ of certiorari and a writ of mandamus regarding a criminal prosecution in the Court of Common Pleas in and for Sussex County (“CCP”).

2) Vincent was charged with maintenance of a fire hazard in violation of 16 Del. C. § 6611.¹ Although he originally sought a jury trial, Vincent agreed to trial before a judge.² The

¹In 16 Del. C. § 6611, it is provided:

(a) No person shall erect, construct, reconstruct, alter, maintain or use any building, structure or equipment or use any land in such a way to endanger life or property from the hazards of fire or explosion or in violation of any regulation or any provision of or any change thereof promulgated by the State Fire Prevention Commission under the authority of this chapter.

(b) Whoever recklessly violates such regulations, provisions or change or any provision of this chapter with the exception of exceeding the posted occupant load in a place of assembly as outlined in subsection (c) of this section shall be fined not more than \$ 100 or imprisoned not more than 10 days or both.

case was heard before the CCP Judge on March 6, 2006. The Judge found him guilty, and on that date, sentenced him to pay court costs, to pay a videophone fund fee in the amount of \$1.00,

(c) Whoever negligently violates the regulation of exceeding the posted occupant load in a place of assembly, as defined in the Delaware State Fire Prevention Regulations, shall be fined at least \$ 10.00 but not more than \$ 100 per person exceeding the posted occupant load as determined by the State Fire Marshall.

(d) Each and every day during which such illegal erection, construction, reconstruction, alteration, maintenance or use continues after knowledge or official notice that same is illegal shall be deemed a separate offense.

(e) In case any building, structure or equipment is or is proposed to be erected, constructed, reconstructed, altered, maintained or used, or any land is or is proposed to be used in such a way to endanger life or property from the hazards of fire or explosion or in violation of this chapter or of any regulation or provision of any regulation or change thereof promulgated by the State Fire Prevention Commission under the authority granted by this chapter, the State Fire Prevention Commission, the State Fire Marshal or the Attorney General may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or any other appropriate action or actions, proceeding or proceedings to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

(f) The State Fire Marshal, or the Marshal's Deputy or Deputies, may make arrests of persons violating offenses under this section or of persons violating any of the laws of this State relating to fires or burning.

(g) Justices of the peace shall have jurisdiction over offenses under this section.

(h) All moneys derived from a violation of subsection (c) of this section shall be placed in a special fund to be used by the State Fire Marshal to carry out the provisions of this chapter. Fines that are a result of violations of this chapter that occur within the jurisdiction of the Jurisdictional Fire Marshals shall be placed in a separate special fund to be used in that jurisdiction to carry out the provisions of this chapter.

²My previous order in the appeal of the CCP decision in Vincent v. State of Delaware, C.A. No. 0512015642, incorrectly stated that a jury decided the case.

and to serve five (5) days at Level 5, suspended for six (6) months of probation at Level 1.

3) Vincent appealed that decision to this Court and filed a motion to proceed in forma pauperis. The Court granted the motion to proceed in forma pauperis but denied the appeal because it lacked jurisdiction to entertain the appeal. Vincent v. State, Del. Super., Def. ID# 0512015642, Graves, J. (April 13, 2006) (ORDER).

4) On April 24, 2006, Vincent filed the pending petition seeking a writ of certiorari and a writ of mandamus. He also seeks to proceed in forma pauperis and notes this motion previously was granted. The Court again grants the motion to proceed in forma pauperis. However, before allowing the matter to proceed, it reviews the petition to determine if it is of legal merit. 10 Del. C. § 8803(b).

5) Vincent's argument for the granting of the petition seeking a writ of certiorari or a writ of mandamus is that the State Fire Marshall did not have jurisdiction to prosecute him. According to his petition, the criminal charge was based on a violation of the National Electrical Code and again, the State Fire Marshall does not have jurisdiction to prosecute such a violation. Vincent also seeks a review of the trial judge's dismissal of Vincent's motion for an unlawful arrest.

6) The petition is dismissed to the extent it seeks the issuance of a writ of certiorari. The petition was not filed within thirty (30) days from the date of the sentencing; thus, it was not timely filed. Elcorta, Inc. v. Summit Aviation, Inc., 538 A.2d 1199 (Del. Super. 1987). The Court could excuse this default in an appropriate circumstance. Id. However, another problem exists with this case, namely, it is not appropriate for a review by certiorari. Hurst v. State, 832 A.2d 1251(Del. 2003) ("Hurst"). In Hurst, the Supreme Court reviewed appellant's contention that the

Superior Court should have reviewed, by certiorari, a decision of the Court of Common Pleas which was not otherwise appealable to the Superior Court. The Supreme Court stated at pages 3-6:

(4) A writ of certiorari is an extraordinary remedy used to correct irregularities in the proceedings of a trial court. n3 Review is generally confined to jurisdictional matters, errors of law or procedural irregularities that appear on the record. n4 On certiorari, the reviewing court may not consider the merits of the case nor substitute its own judgment for that of the trial court, n5 nor may the reviewing court weigh and evaluate evidence. n6

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n3 Shoemaker v. State, 375 A.2d 431, 437 (Del. 1977).

n4 Goldstein v. City of Wilmington, 598 A.2d 149, 152 (Del. 1991).

n5 Stevens v. Steiner, 574 A.2d 263 (Del. Supr.).

n6 Castner v. State, 311 A.2d 858 (Del. 1973).

----- End Footnotes-----

(5) Certiorari is available to challenge a final order of a trial court only where the right of appeal is denied, a grave question of public policy and interest is involved, and no other basis for review is available. n7 If these threshold requirements are not met, the reviewing court lacks jurisdiction to hear the petitioner's claims. n8

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n7 Shoemaker v. State, 375 A.2d 431, 437-438 (Del. 1977).

n8 In re Butler, 609 A.2d 1081, 1081 (Del. 1992).

----- End Footnotes-----

(6) In the Superior Court, Hurst argued that he was entitled to certiorari review to consider alleged discovery violations and erroneous evidentiary rulings that were made during the course of the Court of Common Pleas proceedings. In his opening brief on appeal, Hurst alleges that the Court of Common Pleas record demonstrates; (i) an illegal seizure by the police; (ii) an "incoherent" Information; (iii) numerous discovery violations; (iv) lack of a speedy trial; (v) erroneous evidentiary rulings; (vi) a "cover-up" and scheduling fraud by the Court of Common Pleas; and (vii) lack of proper notice and enforcement of citation on appeal by the Superior Court.

(7) Hurst was not entitled to certiorari review in the Superior Court, nor is he entitled to the issuance of a writ of certiorari from this Court. Notwithstanding Hurst's arguments to the contrary, the errors complained of by Hurst are clearly not evident from the face of the record. Certiorari may not be used as a device to circumvent the requisites of the appellate jurisdiction of this Court n9 or the Superior Court, as established by the Constitution. n10

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n9 The Delaware Constitution provides for this Court to hear "appeals from the Superior Court in criminal causes, upon application of the accused in all cases in which the sentence shall be death, imprisonment exceeding one month, or fine exceeding One Hundred Dollars, and in such other cases as provided by law." Del. Const. art. IV, § 11(1)(b). The Court may not receive an appeal directly from the Court of Common Pleas.

n10 Castner v. State, 311 A.2d 858 (Del. 1973).

----- End Footnotes-----

(8) It is manifest on the face of Hurst's opening brief that the appeal is without merit. The issues presented are clearly controlled by settled Delaware law. To the extent that judicial discretion is involved, clearly there was no abuse of discretion.

In this case, although Vincent alleges no jurisdiction existed to prosecute him, this alleged jurisdictional issue does not appear on the record. Instead, the record shows a statutorily authorized prosecution. Additionally, the dismissal of his motion asserting an unlawful arrest is not a jurisdictional matter, error of law or procedural irregularity that appears on the record. What Vincent actually seeks is to have the Superior Court consider the merits of the case or substitute its own judgment for that of the trial court or weigh and evaluate evidence. Such a case is not appropriate for a certiorari review. Hurst v. State, supra. This Court will not allow for a certiorari proceeding to circumvent limitations on appeal rights which are set by the Constitution. See Hurst v. State, supra. The petition seeking a writ of certiorari is denied.

7) The petition also is dismissed to the extent it seeks the issuance of a writ of mandamus. The Superior Court may not “compel a lower court to decide a matter before it in any particular manner or to review judicial actions taken in the exercise of the lower court’s legitimate jurisdiction.” Alston v. Pennella, Del. Supr., No. 413, 1998, Walsh, J. (Dec. 9, 1998), quoting In re Bordley, 545 A.2d 619 (Del. 1988). As the Supreme Court explained in the case of In re Bordley, 545 A.2d at 620-21:

The peremptory writ of mandamus has traditionally been used only to confine a trial court "to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." Roche v. Evaporated Milk Ass'n, 319 U.S. 21, 26, 63 S. Ct. 938, 87 L. Ed. 1185 (1943), quoted in Will v. United States, 389 U.S. 90, 95, 88 S. Ct. 269, 19 L. Ed. 2d 305 (1967). See also In re Petition of Justice of the Peace Mabel Pitt, Del. Supr., 541 A.2d 554, 556 (1988). This Court may issue a writ of mandamus when the petitioner can show that he has a clear right to the performance of a duty by a trial court, that no other adequate remedy is available, and that the trial court has arbitrarily failed or refused to perform its duty. See Schagrin Gas Co. v. Evans, Del. Supr., 418 A.2d 997, 998 (1980) (per curiam). Therefore, in the absence of a clear showing of an arbitrary refusal or failure to act, this Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in

a particular way, or to dictate the control of its docket. See id.; Norman v. State, Del. Supr., 54 Del. 395, 177 A.2d 347, 349 (1962) (quoting In re Rice, 155 U.S. 396, 39 L. Ed. 198, 15 S. Ct. 149 (1894)).

In this case, Vincent has not shown any entitlement to a writ of mandamus. Thus, the petition is dismissed to the extent it seeks the issuance of a writ of mandamus.

IT IS SO ORDERED THIS _____ DAY OF MAY, 2006.

JUDGE

cc: Prothonotary's Office
Raymond L. Vincent
Department of Justice
Court of Common Pleas